IN THE HIGH COURT OF JUDICATURE AT BILASPUR,

CHHATTISGARH

WRIT PETITION NO. 4603 OF 2003

PETITIONER:

Smt. Kavita Tiwari,
W/o Shri Y.C. Tiwari,
Aged about 61 years,
R/o Juna, Bilaspur,
Working as Upper Division
Teacher, Lal Bahadur Shastri
Municipal Higher Secondary
School, Shanichari,
Bilaspur (C.G.)

P. R. No. 3602/03
Presented by Shri U.R. Tiwari
dated 04/12/03

- Versus -

RESPONDENTS:

1. State of Chhattisgarh,
Through: The Secretary,
Department of Urban
Development and
Administration,
Mantralaya, D.K.S.
Building, Raipur (C.G.)

2. Municipal Corporation,
Bilaspur,
Through: Its
Commissioner,
Municipal Corporation
Building, Nehru Chowk,
Bilaspur (C.G.)

Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1. PARTICULARS OF THE PETITIONER:

As mentioned in the cause title above.

AFR

29.3.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4003 of 2003

Petitioner Smt. Kavita Tiwari

Versus

Respondents State of Chhattisgarh and another

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Manindra Shrivastava, Senior Advocate with Shri B. D. Guru, Advocate for the petitioner.

Smt. Anju Ahuja, Deputy Govt. Advocate for the respondent No. 1.

Shri A. S. Kachwaha, Advocate for the respondent No.2.

ORAL ORDER

(29th March, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition, filed under Article 226/227 of the Constitution of India, seeks a writ of mandamus/any other writ for grant of pay scale of the post of Lecturer from the date the petitioner was promoted on the post of Lecturer. It was further prayed that the difference of salary paid to the petitioner and salary of the post of Lecturer be also paid with interest to the petitioner.

2. The relevant facts in nutshell are that initially the petitioner was appointed on the post of Upper Division Teacher and subsequently vide order dated 9.2.1983, she was confirmed on the post of Upper Divisional Teacher.

3. The petitioner along with others was promoted to the post of Lecturer vide order dated 16.7.1997(Annexure P/2) on the pay scale of Rs. 1640-60-2600-75-2900. According to the petitioner the petitioner having been promoted, assumed the responsibility of the post of Lecturer at Lalbahadur Shastri Higher Secondary School, Bilaspur.

However, the petitioner was paid only salary of the Upper Division Teacher.

4. The Commissioner, Municipal Corporation, Bilaspur passed an order dated 28.8.1997 (Annexure R-2/2) to the effect that the officers who were promoted in the month of July would get the salary of the old post till the promotion is approved by the Government. It was further stated in the order that the petitioner would get arrears of the salary of the promoted post on approval of the promotion. The petitioner was accordingly deprived of the pay scale of Lecturer which ought to have been paid to her from the time of promotion on the post of Lecturer w.e.f. 16.7.1997.

5. Being aggrieved, the petitioner filed W.P.No. 198/2003 in this Court. This Court by order dated 22.8.2003 directed the respondent-Competent Authority to consider and decide the representation of the petitioner for grant of pay scale of Lecturer within a period of two months from the date of the receipt of the representation. The respondent No.2 considered the representation and vide order dated 1.11.2003 (Annexure P/1) rejected the representation of the petitioner on the ground that the petitioner cannot be paid salary of the post of Lecturer as files relating to promotion were called for by the Commissioner, Bilaspur Division and Collector, Bilaspur. It was stated that no direction was issued by the then district administration and as such the petitioner could not be paid the salary of the post of Lecturer.

6. Being aggrieved, the petitioner has filed this petition seeking a writ/direction against the respondents to grant pay scale of the post of Lecturer and arrears of salary also be paid w.e.f. 16.7.1997. During the pendency of this petition, the petitioner retired on 30th April, 2005.

7. Learned counsel appearing for the petitioner submits that Section 58 (1) of the M. P. Municipal Corporation Act, 1956 (which will be referred hereinafter as 'the Act, 1956') provides that the Municipal Corporation was not required to obtain prior approval of the State Government in case of appointment of the Lecturer, as proviso to Section 58 (1) provides that "the power of appointing any person on a municipal post which carries a maximum scale of pay as the State Government may, from time to time, by an order in writing specify, shall vest in the Mayor-in-Council or the Commissioner." Thus the appointment of Lecturer comes within the power of the Commissioner. In the present case the State by its letter dated 26.10.1988 (Annexure P/11) clearly prescribed that under the proviso to Section 58 (1) of the Act, 1956 in case of an appointment/promotion which caries the maximum pay scale of Rs. 1540-2750, with subsequent revisions of pay, time to time, the Commissioner alone would be competent for appointment/ promotion.

8. Learned counsel further submits that in view of the legal provisions and submissions stated above, the Commissioner, Municipal Corporation was not obliged to seek any approval or sanction of the State Government and the petitioner was entitled to full scale of pay of the post of Lecturer. It is further contended that the promotion to the post of Lecturer vide order dated 16.7.1997 has not been disputed by any authority of the State Government.

Smt. Anju Ahuja, learned counsel appearing for the State points out that the respondent State has filed its return wherein it is clearly stated as under:-

> "but in the posts like Upper Division Teacher, Lecturer etc. and the posts for which the petitioner is working and the post to which

she is seeking promotion, no prior approval is needed from the State Government and the Respondent No.2 can itself be permitted to the petitioner".

Learned counsel submits that the petitioner was entitled to the pay scale of the post of Lecturer and she could not have been denied on the ground that the files were lying with the Commissioner, Bilaspur Division or Collector, Bilaspur or any other officer.

10. The approval/sanction was not required to be granted by the State under section 58(1) of the Act, 1956 which clearly provided that in case of appointment/promotion on a post which carries the maximum pay scale of Rs. 1540-2750, with subsequent revision of pay, time to time, the Commissioner is competent to appoint or promote a person.

11. Shri A. S. Kachwaha, learned counsel appearing for the respondent No.2 submits that it is true that the petitioner was appointed on the post of Lecturer and it is not disputed, however the Commissioner/respondent No.3 could not make the payment of salary of the post of Lecturer in view of the facts that the files were lying with the Commissioner, Bilaspur Division and Collector, Bilaspur. It is further contended that the Commissioner/respondent No.3 had made it clear that the petitioner would be entitled to salary of the promoted post of Lecturer, but the same could not be made because no specific instructions were received from the State Government. It was clearly stated in the order dated 28.8.1997 (Annexure R/2-2) that the petitioner would be paid difference of salary on having received the order of approval from the State Government.

12. Having heard learned counsel for the parties and having perused the records appended to the petition and to the returns filed by the respondents, it is indisputably established that the petitioner was promoted in accordance with law to the post of Lecturer on a pay

scale of Rs. 1640-60-2600-75-2900. The petitioner continued to receive the salary of the Upper Division Teacher even after promotion to the post of Lecturer. The Respondent No.3 has wrongly declined the salary of the post of Lecturer to the petitioner on the ground that the promotion to the post of Lecturer was pending approval before the State Government. The order dated 1.11.2003 (Annexure P/1) passed by the Commissioner of the Municipal Corporation, Bilaspur, on the representation of the petitioner was without any basis, as pendency of the document relating to the promotion of the petitioner to the post of Lecturer in the office of the Commissioner, Bilaspur Division and Collector, Bilaspur does not prevent the Commissioner, Municipal Corporation from making payment of salary of the post of Lecturer to the petitioner as she was duly promoted to the post of Lecturer on 16.7.1997.

13. The legal provision is very clear, proviso to Section 58(1) of the Act, 1956 does not prescribe for obtaining prior or otherwise approval of the State Government wherein, in the case of appointment or promotion to the post which carries maximum salary of the pay scale i.e. Rs. 1540-2750, as is evident from the order dated 26.10.1988, which clearly provides that the appointment or promotion to the post which carries maximum salary of the pay scale Rs.1540-2750 with subsequent revised pay scale in future, the approval/sanction of the State Government was not required and the Commissioner alone was competent for appointment/promotion on the post.

14. As per the order dated 13.3.1990 (Annexure P/9) it is evident that earlier the pay scale of the post of Lecturer was Rs. 1540-40-1620-50-2320-60-2740 which was later on revised that is why the appointment order of the petitioner shows the pay scale of the post of Lecturer as Rs. 1640-60-2600-75-2900/-. It is, therefore, clearly established that

under the proviso to Section 58(1) of the Act 1956 read with the letter dated 26.10.1988, the appointment/promotion to the post of Lecturer was within the jurisdiction of the Commissioner, Municipal Corporation and no sanction/approval of the State Government was required. The Corporation has never obtained sanction/approval of the State Government earlier while promoting Upper Division Teachers to the post of Lecturers as is evident from the order dated 13.3.1990(Annexure P/9).

15. The State Government has also made it clear in its reply that no sanction/approval of the State Government is required for appointment/promotion on the post of Lecturer.

16. For the reasons stated above, the petition succeeds and is allowed. The respondent No.3 is directed to pay the difference of salary of the pay, the petitioner was receiving from 16.7.1997 and the pay of Lecturer, revised from time to time, till her date of retirement i.e. 30th April, 2005, with interest at the rate of 6% per annum.

Certified copy, as per Rules.

Sd/-
Satish K. Agnihotri
Judge